

**Brimbank Planning Scheme Amendment C225brim
Planning Policy Framework Translation**

Panel Report

Planning and Environment Act 1987

29 July 2022

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.
[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

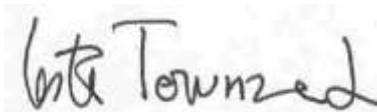
Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Brimbank Planning Scheme Amendment C225brim

Planning Policy Framework Translation

29 July 2022



Lester Townsend

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Appendix A Document list

Glossary and abbreviations

AACC	Albion and Ardeer Community Club
ANEF	Australian Noise Exposure Forecast
APAM	Australia Pacific Airports (Melbourne) Pty Ltd
BESS	Built Environment Sustainability Scorecard
CDZ	Comprehensive Development Zone
Council	Brimbank City Council
DELWP	Department of Environment, Land, Water and Planning
EPA	Environment Protection Authority
MAC	Major Activity Centre
MAEO	Melbourne Airport Environs Overlay
MPS	Municipal Planning Strategy
NAC	Neighbourhood Activity Centre
NASF	National Airports Safeguarding Framework
PE Act	<i>Planning and Environment Act 1987</i>
PPF	Planning Policy Framework
SPPF	State Planning Policy Framework
VPP	Victoria Planning Provisions

Overview

Amendment summary

The Amendment	Brimbank Planning Scheme Amendment C225brim
Common name	Planning Policy Framework Translation
Brief description	The Amendment seeks to translate policy content from the Local Planning Policy Framework into a new Municipal Planning Strategy and integrated Planning Policy Framework and incorporate new local policy content.
Subject land	The Amendment applies to the whole municipality
Planning Authority	Brimbank City Council
Authorisation	9 August 2021
Exhibition	4 November to 16 December 2021
Submissions	<ul style="list-style-type: none"> - Country Fire Authority - Land and Built Environment Programs, Port Phillip Region, Department of Environment, Water, Land and Planning - Environment Protection Authority - Jenny Isa - Sheryl Ashley - Keilor Historical Society Inc - Keilor Residents and Ratepayers Assoc. Inc - Albion and Ardeer Community Club - Australia Pacific Airports (Melbourne) Pty Ltd (APAM) - Chantelle Ribic - YourLand Developments (River Valley) - Department of Transport.

Panel process

The Panel	Lester Townsend
Directions Hearing	17 May 2022 by video conference conducted by Sarah Raso
Panel Hearing	16 June 2022, by video conference
Site inspections	Unaccompanied, 1 July 2022
Further information	Council's final position on the Amendment was supplied on 30 June 2022
Parties to the Hearing	<ul style="list-style-type: none">- Brimbank City Council represented by Kim Piskuric of Harwood Andrews, who called evidence on Town Planning from Sam D'Amico of Ratio Consultants- YourLand Developments represented by Caroline Graham- Albion & Ardeer Community Club Inc represented by Neil Head- Jenny Isa
Citation	Brimbank PSA C225brim [2022] PPV
Date of this report	29 July 2022

Executive summary

The Amendment seeks to:

- translate relevant existing local policy content from the Local Planning Policy Framework into a new integrated Municipal Planning Strategy and Planning Policy Framework (PPF) in accordance with the structure introduced by Amendment VC148
- incorporate new local policy content identified as part of Council’s review of the Planning Scheme, audit of land use and development directions in the municipality, community consultation process and audit of recently adopted Council policies, strategies and plans (Planning Scheme Review and Audit Process).

Council is required to undertake a review of the Planning Scheme every four years and the Amendment implements the most recent review.

On 31 July 2018, Amendment VC148 was gazetted and came into effect. Amendment VC148 resulted in a new structure for the policy clauses in the Planning Scheme and the Amendment restructures the Local Planning Policy Framework into this new structure.

Council officers worked with the DELWP to combine Council’s review of the Planning Scheme with the translation required pursuant to Amendment VC148.

The Amendment is well founded and strategically justified. It is the result of extensive strategic work. Submissions related to specific issues, and do not challenge the fundamental soundness of the Amendment.

Council is to be congratulated on its systematic and thorough implementation of its strategies into the Planning Scheme.

Council has sought to respond to submissions and prepared a final preferred version of the Amendment after the Hearing in response to submissions raised. The Panel bases its recommendations on this version.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Brimbank Planning Scheme Amendment C225brim be adopted as exhibited subject to the following:

- 1. Make the changes proposed in Council’s document ‘Amendment C225 - Post Exhibition - Preferred Version FINAL(14267983.1)’ (Document 11) sent to the Panel on 30 June 2022.**
- 2. Amend Clause 2.03-1 (Strategic Directions), to update the description of the Sunshine Metropolitan Activity Centre, as follows “... Delivery of the Melbourne Airport Rail link combined with the existing integrated regional transport hub and two railway stations will further enhance its role”.**
- 3. Amend Clause 02.03-4 (Built environment and heritage) to strengthen the heritage section to include text to the effect that Brimbank is significant for its planned suburbs and estates, including:**
 - the 1850s settlements of Keilor and ‘Albion’ (later Sunshine)
 - the architect-designed suburb of St Albans in Melbourne’s 1880s boom
 - the development of Sunshine – one of the first ‘garden suburbs’ in Australia – founded by one of Australia’s leading industrialists

- extensive Commonwealth, State and company housing schemes which created precincts with their own distinct character
 - the HV McKay factory that became one of the largest factories in Australia and the new suburb that developed round the older settlement took the name from the famous harvester - 'Sunshine' and was one of the most unusual town planning developments in Australia's history.
4. On the 'Built Environment and Heritage' Strategic Framework Plan, review the legend heading 'Industrial estate guidelines' and entries under this heading.
 5. On the relevant Framework Plans, include the Sunshine North Neighbourhood Activity Centre.
 6. Address airport safeguarding:
 - on the Context Framework Plan include the current Melbourne Airports Environs Overlay
 - on the Environmental and Landscape Values Framework Plan, correct the boundary of landscape limitation area consistent with NASF Guideline C
 - on the Built Environment and Heritage Framework Plan, correct the boundary of height limitation consistent with Prescribed Airspace and Melbourne Airport Master Plan
 - on the Housing Framework Plan add the current Melbourne Airports Environs Overlay and include N contours.
 7. On the Framework Plans, review the location of the Airport Rail Link and the 'Non-conforming land use' graphic notation.

Possible further work

The following observation on possible further work is presented for Council to consider as it sets its future work programs:

- FW 1. In preparing the implementation plan for its revised housing strategy and neighbourhood character strategy, Council develop actions to remove covenants where these will militate against the achievement of strategically desirable outcomes.**

1 Introduction

1.1 The Amendment

(i) The Amendment

Brimbank Planning Scheme Amendment C225brim (the Amendment) seeks to:

- translate relevant existing local policy content from the Local Planning Policy Framework into a new Municipal Planning Strategy (MPS) and integrated PPF in accordance with the structure introduced by Amendment VC148
- incorporate new local policy content identified as part of Council's review of the Planning Scheme, audit of land use and development directions in the municipality, community consultation process and audit of recently adopted Council policies, strategies and plans (Planning Scheme Review and Audit Process).

As part of the preparation of the Amendment, Council worked closely with Department of Environment, Land, Water and Planning (DELWP) officers to ensure that the translation was prepared in accordance with *A Practitioner's Guide to Victoria's Planning Schemes*, published by DELWP. *A Practitioner's Guide* sets out key rules for practitioners when preparing a planning scheme provision.

The Minister for Planning gave conditional authorisation to prepare and exhibit the Amendment on 9 August 2021. The conditions were administrative in nature and included:

- confirmation from Council that any new policy is a translation from a Council adopted policy, plan or strategy
- minor reference and mapping changes including an update to the reference to 'three aboriginal parties' (Clause 02) in accordance with recent legislated changes to the boundaries of two Registered Aboriginal Parties.

(ii) The Amendment in detail

The Amendment proposes to:

- replace the Local Planning Policy Framework with a new MPS at Clause 02
- introduce revised local policies into the PPF at Clauses 11 to 19
- amend general provisions and operational provisions consistent with the reforms to the Victoria Planning Provisions introduced by Amendment VC148.

Specifically, the Amendment will introduce local policy in the following clauses:

- the Municipal Planning Strategy
 - 02 Municipal Planning Strategy
 - 02.01 Context
 - 02.02 Vision
 - 02.03 Strategic directions
 - 02.04 Strategic Framework Plans
- the Planning Policy Framework
 - 11.01 Victoria (Settlement)
 - 11.03 Planning for places (Settlement)
 - 12.01 Biodiversity (Environmental and landscape values)
 - 12.03 Water bodies and wetland (Environmental and landscape values)

- 13.05 Noise (Environmental risks and amenity)
- 13.07 Amenity, human health and safety (Environmental risks and amenity)
- 15.01 Built environment (Built environment and heritage)
- 15.02 Sustainable development (Built environment and heritage)
- 15.03 Heritage (Built environment and heritage)
- 16.01 Residential development (Housing)
- 17.01 Employment (Economic development)
- 17.03 Industry (Economic development)
- 19.02 Community infrastructure (Infrastructure)
- 19.03 Development infrastructure (Infrastructure)
- schedules to Planning Scheme provisions:
 - Schedule to Clause 52.28 gaming (Particular provisions)
 - Schedule to Clause 72.04 documents incorporated in this planning scheme (Operational provisions)
 - Schedule to Clause 72.08 background documents (Operational provisions)
 - Schedule to Clause 74.01 application of zones, overlays and provisions (Operational provisions)
 - Schedule to Clause 74.02 further strategic work (Operational provisions).

(iii) Pre Hearing changes

In response to submissions and internal referral comments, Council proposed changes to the Amendment documentation before the Hearing. Council's proposed changes were documented in Council's part A submission at Appendix D.

Council drew the Panel's attention to the following more substantive proposed post-exhibition changes:

- At Clause 02.01:
 - adding a reference to the "*volcanic plains*" environmental character of Brimbank, in response to internal referral comments
 - adding a reference to Brimbank's vulnerability to the impacts of climate change, in response to internal referral comments.
- At Clause 02.03-3:
 - adding a new strategic direction to "*increase the extent and condition of natural habitat across the municipality*", in response to internal referral comments
 - changing wording under "*Contaminated and potentially contaminated land and landfills*" in response to Submitter 3, Environment Protection Authority (EPA), to clarify policy intent
 - adding a new strategic direction to "*encourage design and construction techniques in new developments that will minimise off-site amenity impacts from industrial uses on residential uses*" in response to Submitter 11.
- At Clause 02.04:
 - changing the Strategic Framework Plans to delete all references to the Melbourne Airport Environs Overlay (MAEO), Landscape Limitation Area and Height Limitation Area, in response to Submitter 9 and Submitter 11 (in respect of the MAEO specifically)
 - changing the Strategic Framework Plans to show areas affected by the ESO1 and ESO3 as "*key environmental assets*", in response to internal referral comments

- changing the Transport Strategic Framework Plan to include all bus routes, in response to Submitter 11
- changing the Active Transport and Community Infrastructure and Open Spaces Strategic Framework Plans to include the proposed pedestrian bridge and future connections to adjoining municipalities, in response to Submission 11
- changing the Built Environment and Heritage Strategic Framework Plan to show the extent of the DDO1 and revise the wording in the legend to read “*visually sensitive creekside waterway areas (DDOs)*”, in response to Submitter 11 (change underlined)
- At Clause 11.01-1L, deleting the background document *Melbourne Airport Master Plan (Australia Pacific Airports Pty Ltd, Melbourne, 2018)*, in response to Submitter 9.
- At Clause 11.03-1L (Metropolitan and Major Activity Centres - Brimbank), under the strategies for Sydenham Major Activity Centre, adding a reference to Taylors Creek as a “*habitat corridor*” in response to internal referral comments.
- At Clause 12.03-1L, adding a new strategy to “*encourage retention of native vegetation and habitat values along waterways and associated open space corridors*” in response to internal referral comments.
- At Clause 15.03-1L, adding a new strategy in relation to new buildings, being to “*disregard the impact of non-contributory buildings and works when determining the appropriate siting, massing and scale of extensions and upper storey additions to existing heritage buildings and the construction of new buildings*” in response to internal referral comments.
- At the Schedule to Clause 43.01 (Heritage Overlay), adding a new application requirement as follows (translated from Clause 22.01), in response to internal referral comments:

Require all applications for the demolition of a contributory heritage place to be accompanied by a report from a suitably qualified structural engineer with experience in the conservation of heritage buildings that assesses the structural condition of the building and whether or not the defects can be repaired and the place restored.

Council also proposed, a change to the Schedule to Clause 72.08 (Background Documents) to refer to the title of the final adopted document:

Brimbank Climate ~~Change~~ Action Emergency Plan 2020-2025 (Brimbank City Council, 2020).

(iv) Changes during the Hearing

Council proposed further changes during the Hearing based on the recommendations of Mr D’Amico who gave evidence for Council:

- Include the vulnerability of the Council to climate change at Clause 2.01 as a separate sentence and not part of the social-economic discussion
- Update the Economic Development map at Clause 02.04 as follows:
 - Replace Delahey with Keilor Downs, being the correct label for the Neighbourhood Activity Centre
 - Include Delahey as a Neighbourhood Activity Centre (NAC) in the correct location
 - Remove the red circles numbered 6 and 10 as they are not referenced in the description legend, or clarify what they relate to
 - Provide the correct spelling of Cairnlea
 - Include Taylors Lakes as a NAC.
- Modify the Built Environment and Heritage map at Clause 02.04 to replace Watergardens MAC (CDZ) with Sydenham MAC (CDZ), and Keilor should be referenced

as a NAC not MAC in the description legend. This is to ensure consistency with the Economic Development map

- Clause 11.03-1L-02 should identify St Albans as a Major Activity Centre.

(v) Post Panel changes

A number of changes were proposed by Council following the Hearing. These were primarily in response to changes to state policy made by Amendment VC216 that dealt with environmentally sustainable development. These were presented by way of track changes in the document 'Amendment C225 - Post Exhibition - Preferred Version FINAL(14267983.1)' (Document 11).

1.2 The Panel's approach

The Amendment is the result of a statutory requirement to review the scheme, and changes to implement an integrated PPF.

The Panel broadly agrees with Mr D'Amico' expert opinion was that:

- The Amendment:
 - is consistent with State and regional planning policy, and no policy has any obvious level of conflict or repetition
 - has been appropriately translated into the new format PPF
 - has been *"appropriately drafted, creating a succinct and relevant MPS"* and a *"well-drafted PPF translation as sought by VC148"*
- Council has:
 - *"generally adopted an approach to policy documents and the inclusion of background and incorporated documents that is consistent with relevant guidance provided in A Practitioner's Guide to Victorian Planning Schemes"*
 - responded appropriately to submissions
 - proposed acceptable post-exhibition changes that are adequately justified, noting that many of the proposed changes comprise minor drafting changes.

The Panel considers that the Amendment is consistent with relevant state policy, and with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified. The final Council preferred version responds appropriately to submissions, except where specifically noted in this report. The Amendment should proceed with the changes proposed by Council subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

The Panel recommends:

- 1. Make the changes proposed in Council's document 'Amendment C225 - Post Exhibition - Preferred Version FINAL(14267983.1)' (Document 11) sent to the Panel on 30 June 2022.**

1.3 Issues raised in submissions

Twelve submissions were received in response to exhibition, including one late submission received on 5 April 2022 (which was accepted and considered by Council):

- Three submissions supported the Amendment subject to changes (Submissions 1, 3 and 11)

- Five submissions identified issues and requested changes to the Amendment (Submissions 4, 5, 6, 7, 9)
- Two submissions objected to the Amendment and requested changes (Submissions 8 and 10)
- Two submissions did not object to the Amendment (Submissions 2 and 12).

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

The submissions raise a number of detailed issues, primarily related to the MPS, and policy around built form.

This Report deals with the issues under the following headings:

- Municipal Planning Strategy
 - Clause 02.01: Context
 - Clause 02.03: Strategic directions
 - Clause 02.04: Framework Plans
- PPF issues and scheme provisions
 - Noise impacts
 - Sensitive uses in industrial and employment areas
 - Urban Stormwater Management Guidance
 - Built Environment Sustainability Scorecard
 - Landscape, urban forest and street trees
 - Heritage
 - Character and quality of St Albans
 - Agent of change principle
 - Application of Zones, Overlays and Provisions
 - Further strategic work.

2 Reviewing planning schemes

2.1 A requirement to review

In accordance with Section 12B of the *Planning and Environment Act 1987* (PE Act), Council is required to undertake a review of the Planning Scheme every four years, the objective of which is to:

...enhance the effectiveness and efficiency of the planning scheme in achieving –

- (a) The objectives of planning in Victoria
- (b) The objectives of the planning framework established by this Act.”¹

Section 12B(4) of the PE Act states that the review must evaluate the Planning Scheme to ensure that it:

- is consistent in form and content with the directions or guidelines issued by the Minister under section 7 of the PE Act
- sets out effectively the policy objectives for use and development of land in the area to which the Planning Scheme applies
- makes effective use of State provisions and local provisions to give effect to State and local planning policy objectives.

In 2017 Council commenced a review and audit of the Planning Scheme to assess its performance and gaps, identify current State and regional plans, strategies, policies and initiatives that impact the municipality of Brimbank, and identify any Council strategic projects that had land use and development implications. The results of that work are recorded in the Brimbank Planning Scheme Evaluation Report 2017, which Council endorsed for provision to the Minister for Planning at its meeting on 12 December 2017.

In 2018, Council undertook a community consultation process in relation to Council’s review of the Planning Scheme. The consultation process, known as ‘Plan Brimbank’, involved over 1,900 participants who identified the following community priorities:²

- Housing affordability
- Housing choice particularly larger (3 or more bedroom) dwellings with a large backyard
- Housing located close to public transport and bicycle paths
- Quality parks, playgrounds and open spaces
- Local job opportunities and encouraging local business
- Green spaces including shared paths along waterways
- Conserving native vegetation reserves.

In October 2018, Council undertook an audit of recently adopted Council policies, strategies and plans that had a land use planning focus, to capture key policy content for inclusion in the Planning Scheme. 50 policies, strategies and plans were reviewed, and of those, 39 were selected as source documents for local planning policy content.

¹ *Planning and Environment Act 1987* (Vic), s 12B(3).

² As noted at the Ordinary Meeting of Council on 16 October 2018.

Source documents

The new local policy content is sourced from 39 adopted Council policies, strategies and plans:

- *Brimbank Cultural Strategy 2018 – 2022*
- *Brimbank Community Vision 2040*
- *Brimbank Council Plan 2017-2021*
- *Brimbank Settlement Action Plan 2019-2023*
- *Brimbank Innovate Reconciliation Action Plan July 2019 – July 2021*
- *Waste, Recycling, and Litter Strategy 2018-2028*
- *Brimbank Public Art Policy and Plan 2018 – 2023*
- *Brimbank Lifelong Learning Strategy 2018 – 2023*
- *Brimbank Aboriginal Cultural Heritage Strategy 2018 – 2023*
- *Brimbank Cycling and Walking Strategy 2016*
- *Brimbank Sports Facility Development Plan 2018*
- *Brimbank Age Friendly City Plan 2018 – 2022*
- *Creating Better Parks Policy and Plan 2016*
- *Urban Forest Strategy 2016-2046*
- *Brimbank Activity Centre Strategy 2018*
- *Brimbank Economic Development Strategy 2016 – 2020*
- *Green Wedge Management Plan 2010*
- *Sunshine Town Centre Structure Plan 2014*
- *Brooklyn Evolution 2016*
- *Brimbank Industrial Land Strategy 2018 – 2030*
- *Disability Action Plan 2017 – 2020*
- *Brimbank Heritage Strategy 2018 – 2023*
- *Brimbank Community Safety Strategy 2015 – 2019 and Safe and Inclusive Brimbank 2020-2024*
- *Brimbank Habitat Connectivity Plan 2018 – 2023*
- *Brimbank Biodiversity Strategy 2012 – 2022*
- *Albion Neighbourhood Plan 2013*
- *Revised Brimbank Sustainable Water Management Strategy 2013 – 2023*
- *Keilor Village Vision Document 2015*
- *Brimbank Housing Strategy ‘Home and Housed’ 2014*
- *St Albans Activity Centre Precinct Structure Plan 2015*
- *Brimbank Electronic Gambling Policy 2019*
- *Brimbank Development Contributions Plan 2016*
- *Community Services and Infrastructure Plan 2018 – 2038*
- *Brimbank Parking Strategy 2019 – 2029*
- *Transport Priorities Paper 2018*
- *Brimbank Response Strategy – Western Rail Plan, including Melbourne Airport Rail Link And Sunshine Super Hub 2019*
- *Brimbank Climate Change Action Plan 2020 - 2025 / Brimbank Climate Emergency Plan 2020-2025*
- *Revised Greenhouse Reduction Strategy 2013 – 2023.*

All these documents are proposed to be included in the Planning Scheme either as an incorporated document or a background document.

The Amendment also seeks to include other background documents, as specified in the Amendment documentation (refer to the Schedules to Clauses 72.04 and 72.08), which are currently reference documents in the Local Planning Policy Framework or were otherwise identified for inclusion during the Planning Scheme Review and Audit Process, but are not source documents for the new local policy content sought to be introduced into the new format PPF.

2.2 Translation to new format planning scheme

Amendment VC148

On 31 July 2018, Amendment VC148 was gazetted and came into effect. Amendment VC148 introduced changes to the VPP and all planning schemes arising from the Victorian Government's Smart Planning Program. Amendment VC148 resulted in a new format planning scheme, including:

- the introduction of a new MPS (Clause 02), which replaces the Municipal Strategic Statement
- the introduction of a new PPF (Clauses 10-19), combining three levels of policy (State, Regional and Local) under each theme, which replaces the State Planning Policy Framework (SPPF) and Local Planning Policy Framework
- the introduction of new operational provisions in relation to administration and enforcement (Clause 72)
- the introduction of new operational provisions in relation to strategic implementation (Clause 74).

Consultation with DELWP

The translation of the existing policies into the new format is the end product of a detailed and thorough process.

Between February and July 2020, Council officers worked with DELWP to combine Council's review of the Planning Scheme with the translation required pursuant to Amendment VC148. The combination of the two processes meant that the translation was not policy neutral and introduced new content, and therefore required a standard planning scheme amendment process rather than a fast-tracked amendment process pursuant to section 20(4) of the Act.

The translation process included:

- a redistribution of existing local policy into a draft new format PPF
- a review of, and inclusion, of relevant land use and development policy and guidance contained in recently adopted strategies and plans, resulting in some updates to existing local policy
- a review of the strategic intent of each clause to ensure relevance, clarity and consistency with the Act and State and regional planning policy
- updating existing content to ensure accuracy (including demographics), removal of any repetition between polices and updating references and naming
- mapping to demonstrate existing conditions, adopted policy and key land use aspirations.

The work involved in Council's prior Planning Scheme Review and Audit Process informed the drafting of the translation.

Council submitted:

- A24. Some local policy content identified during the Planning Scheme Review and Audit Process was not included in the draft new format PPF where it is more appropriate for State policy to guide those matters, or where local policy repeats or conflicts with State policy.

Between October 2019 and February 2020, the preliminary draft new format PPF was peer reviewed by an external planning expert. An external planning and urban design consultant was also engaged in April 2020 on an ongoing basis to prepare draft Strategic Framework Plans. The final draft Strategic Framework Plans (including post-exhibition changes) were completed in February 2022.

In the latter half of 2020, DELWP initiated an informal preliminary review and workshop process with Council officers.

In the first quarter of 2021, DELWP undertook a formal review of the draft new format PPF and confirmed that it was ready for public exhibition.

At its meeting on 20 July 2021, Council resolved to seek authorisation from the Minister for Planning to prepare and exhibit the Amendment, which seek to introduce an integrated, new format PPF and MPS (with associated changes to the Planning Scheme) derived from the process outlined above.

Authorisation of the Amendment

By way of letter dated 9 August 2021 (Authorisation Letter), DELWP under delegation from the Minister for Planning authorised the preparation of the Amendment subject to a number of conditions.

The Authorisation Letter also contained the following ‘substantive issues for noting’:

The implementation of the Sunshine Transport Precinct is currently being undertaken by the DoT. The Victorian Government is investing over \$20 billion in infrastructure in Melbourne’s west, to support a thriving community, greater business investment and better transport connections. A key to this is the Sunshine Transport Precinct which will maximise benefits from significant government investment in the transport super hub at Sunshine connecting Melbourne with regional Victoria and Melbourne Airport– helping make Sunshine the centre of Melbourne’s west. The Victorian Government has recently undertaken consultation on the draft Sunshine Station Masterplan, which looks at requirements for future investment and opportunities around Sunshine Station, beyond Melbourne Airport Rail.

While it is not expected that the strategic work being undertaken by DoT will materially conflict with the PPF translation and the new content being introduced through C225brim, the Sunshine Transport Precinct is a state significant project and any policy changes resulting from that work must be considered prior to adoption. Dependent on the timing and the progression of the Sunshine Transport Precinct project, documentation relating to C225brim may need to be updated time to time at the discretion or direction of DELWP.

2.3 Other relevant planning scheme amendments

Three planning scheme amendments are relevant to this Amendment:

- Amendment VC218
- Amendment VC216
- Draft Amendment C222brim.

Amendment VC218 was gazetted and came into operation on 18 May 2022. Amendment VC218 changed the VPP and all planning schemes in Victoria by updating the PPF to further implement the National Airports Safeguarding Framework (NASF) in Victoria.

Specifically, Amendment VC218:

- Amended Clause 18.02-7S (Airports and Airfields) by updating the objectives and strategies to further implement the NASF
- Amended Clause 18.02-7R (Melbourne Airport) by improving the clarity of the strategy and reducing repetition.

Although not directly relevant to the Amendment in question (noting that the Amendment does not propose any changes to Clause 18), the changes introduced by Amendment VC218 are broadly related to the issues raised by Australia Pacific Airports (Melbourne) Pty Ltd (APAM) in Submission 9.

Amendment VC216 dealt with environmentally sustainable development and resulted in the need to change some of the exhibited clauses.

Draft Amendment C222brim has been prepared by the Minister for Planning as the planning authority for the amendment, at the request of Development Victoria. It applies to land at 147A Cairnlea Drive and 26S Glenbrook Avenue, Cairnlea and proposes to amend the Planning Scheme to facilitate development in accordance with the *Cairnlea Comprehensive Development Plan (July 2021)*.

Amendment C222brim was publicly exhibited from 23 February to 7 April 2022. The Government Land Standing Advisory Committee is currently preparing its report on this matter.

3 Municipal Planning Strategy

This Chapter responds to issues raised in relation to the MPS.

3.1 Clause 02.01: Context

Submission

The Albion and Ardeer Community Club's (AACC's) overarching concern was that the Planning Scheme runs the risk of 'air-brushing' heritage considerations from development in Brimbank, saying that the Municipality's development history has not paid due regard to urban conservation:

- 7) In relation to broader-scale strategic matters our primary concern is, therefore that Cl 2.1 'Municipal Planning Strategy - Context' (and Clauses subsequent to this) make no reference to the historical/heritage context of the geography and development planning of Sunshine (then Braybrook Junction) by world-renowned industrialist HV McKay.

The submitter believed that this information needs to be placed "*front and centre*" in the Planning Scheme, and is far more important and relevant than much of the text currently there:

Arguably, it is this perceived apathy, verging on disdain, for the 'Garden-City' development planning heritage of the Sunshine/Albion part of the City, that has led to the irreversible loss of heritage buildings and character over the years ... For example, there is only one McKay Family home still standing ... (currently converted to an aging Child Care Centre) ... thus making, from the AACC's view, conservation and enhancement of heritage, one of the key outcomes and most important objectives of the updated Planning Scheme.

Council

Council submitted that, in accordance with the PPF themes set by DELWP, Clause 02.01 is not the appropriate section of the Planning Scheme to detail post-contact heritage. Clause 02.01 is primarily concerned with key geographical features and demographic statistics that provide guidance in respect of the land use and development profile of the municipality. On that basis, Council did not support the requested change to Clause 02.01.

Panel discussion

The Panel accepts Council's advice that DELWP drafting rules constrain the content of this clause, and on this basis a greater emphasis on heritage is not possible in this section. The Panel notes that Council's response does not address the merits of what is being sought.

The Panel supports Council's approach to this issue.

3.2 Clause 02.02 Vision

Submission

Submission 4 questioned how the following vision statement will be achieved, noting that it is not currently evident in St Albans: "*The urban environment supports a growing population in designated areas while respecting neighbourhood character and heritage*".

Council

Council submitted the proposed vision statements are aspirational and were not drafted to reflect existing conditions.

Panel discussion

The Panel agrees that visions are by their nature aspirational. The Panel supports Council's approach to this issue.

3.3 Clause 02.03: Strategic directions**3.3.1 Development rights****Submission**

The Keilor Residents and Ratepayers Association emphasised what they saw as the importance of individuals' right to develop their own private property as they wish. The submission also sought to emphasise the importance of appeal rights in the planning system, and the importance of being informed by regional and local knowledge.

Council

Council noted that the new format of the PPF was established by the State government.

Council acknowledged the importance of the notice and review rights established by the PE Act and the Planning Scheme. The Amendment does not propose any changes to statutory notice and review rights.

Panel discussion

The submission is very broad in scope. The Panel cannot identify any specific changes that would be appropriate in response to this submission.

The Panel supports Council's approach to this issue.

3.3.2 Sunshine Activity Centre**Submission**

The AACC contended the Sunshine Metropolitan Activity Centre should be referred to as a "*city centre zoning focussed on two railway stations, Albion and Sunshine*" and that it should reference the heritage significance of places within the Sunshine Metropolitan Activity Centre.

The submitter sought:

- 8) CI 2.03-1 'Strategic Directions' ... Settlement – Activity Centres' in relation to the Sunshine [Metropolitan Activity Centre] should reference that it is, very uniquely, a city centre focussed on two railway stations, Albion and Sunshine. And why would it be important to add a reference to Melbourne Airport Rail, which is not yet started construction ... (as a 10 year build) ... but exclude a reference to the large areas of Heritage Overlay and State Heritage-listed sites within the centre ... it does not make sense?

Council

Council noted that Clause 02.03-1 appropriately describes the Sunshine Metropolitan Activity Centre as Brimbank's highest order activity centre. Furthermore, the current Planning Scheme Maps clearly depict the Activity Centre Zone – Schedule 1 as applying to the Sunshine Metropolitan Activity Centre, and the Sunshine and Albion Stations are shown on the Transport map at Clause 02.04. Council submitted that it is not necessary nor appropriate to include the requested information at Clause 02.03-1.

Panel discussion

The Panel thinks that referencing the two stations would give useful strategic context about the scale of the centre, but the Panel is not convinced that having two railway stations in an activity centre is 'very unique'.

Otherwise, the Panel agrees with Council. The Airport rail is a significant project that has moved to the project delivery phase and should be referenced. Heritage issues are dealt with elsewhere in the Planning Scheme.

The Panel recommends:

- 2. Amend Clause 02.03-1 (Strategic Directions), to update the description of the Sunshine Metropolitan Activity Centre, as follows "... Delivery of the Melbourne Airport Rail link combined with the existing integrated regional transport hub [and two railway stations](#) will further enhance its role".**

3.3.3 St Albans Major Activity Centre

Submission

Submission 4 contended that the designation of St Albans as a Major Activity Centre is not appropriate as there is limited capacity for growth, and that higher density development in Major Activity Centres is not warranted.

Council

Council observed that St Albans has been identified for growth at a State level – the St Albans Town Centre is designated as a Major Activity Centre in *Plan Melbourne* and due to its strategic location, St Albans has been included within the Sunshine National Employment and Innovation Cluster. Council's strategic work supports that designation.

Panel discussion

The Panel notes the state designation of St Albans and also records its observations from its site inspection that there appears to be capacity for growth in the activity centre and surrounding area.

The Panel supports Council's approach to this issue.

3.3.4 Planning for residential growth in Deer Park

Submission

Submission 10 noted that Deer Park is identified as an area designated for residential growth, both in the Strategic Framework Plans and by the application of the Residential Growth Zone to the land north of the Deer Park Station.³ Clause 02.03-1 identifies that Deer Park Major Activity Centre is close to key development sites and Deer Park Station "*presents opportunities for renewal and growth ...*".

Submission 10 contended that that is contradictory to a single dwelling restrictive covenant which applies to the majority of land zoned Residential Growth Zone in Deer Park. Submission 10 contended that:

³ Introduced by Amendment C166, approved in March 2016.

The removal of the Restrictive Covenants should be considered to allow the area to achieve the growth that is encouraged by the Planning Scheme and strategic direction as outlined by Council.

Council

Council acknowledged the potential for conflict between existing single dwelling restrictive covenants and the application of the Residential Growth Zone to areas designated as substantial change areas.

Council noted *Planning Practice Note 90 – Planning for Housing (PPN90)* states “minimal change areas should not be identified because single-dwelling covenants or other restrictive instruments exist.”

Council noted that it is in the process of preparing a revised housing strategy and neighbourhood character strategy.

Panel discussion

The Panel notes that there are four ways to remove a restrictive covenant:

- by application to the Supreme Court under the *Property Law Act 1958*
- by a Deed of Consent under the *Transfer of Land Act 1958*
- by a planning permit application
- by a planning scheme amendment.⁴

Permit applications for removing a covenant are subject to specific statutory tests that are set out in sections 60(2) and 60(5) of the PE Act. No specific tests are set out in the Act for a planning scheme amendment that would authorise the removal of a covenant.

The widely accepted criteria for an amendment to authorise variation or removal of a covenant are those set out in the Mornington Peninsula C46 Panel report. These include whether the removal or variation of the covenant would enable a use or development that complies with the Planning Scheme. These principles have been adopted and applied by many subsequent panels.⁵

An important consideration in the strategic justification to remove the covenant is the policy setting for the area. The Panel agrees that covenants should not determine strategic planning process and where appropriate covenants should be removed to facilitate strategically justified development. The Panel agrees with the submitter that removal of the covenant ought to be progressed to realise the strategic opportunities in the area, but this is matter for future work by Council.

The following observation on possible further work is presented for Council to consider as it sets its future work programs:

FW 1. In preparing the implementation plan for its revised housing strategy and neighbourhood character strategy, Council develop actions to remove covenants where these will militate against the achievement of strategically desirable outcomes.

⁴ Section 6(2)(g) of the Planning and Environment Act 1987 enables a planning scheme to authorise the variation or removal of a restrictive covenant for the purpose of sections 23 and 24 of the Subdivision Act 1988.

⁵ See, for example, the panel reports for Casey C67 (June 2005), Manningham C72 (September 2008), Maroondah C85 (April 2014) and Darebin C140 (June 2014), Manningham C112 (March 2017).

3.3.5 Public ownership along the Maribyrnong River

Submission

YourLand requested an additional ‘environmental and landscape values’ strategic direction to support local or state government ownership of public open space along the Maribyrnong River corridor.

Council

Council did not support the requested change. Clause 02.03 as exhibited includes as a strategic direction:

... support an open space corridor along the Maribyrnong River to protect its natural landscape character, indigenous values and endangered species habitat, and provide access to recreation opportunities.

Council submitted, that this was appropriate drafting to achieve the objective of securing open space along the Maribyrnong River. Further, the river corridor extends for a considerable distance throughout the municipality and is in different, fragmented ownership. The exhibited drafting does not restrict or discourage local or state government ownership of land along the Maribyrnong River corridor.

Panel discussion

The Panel understands that the desire for this strategy stems in part from YourLand’s difficulties in getting the relevant public agencies to commit to taking over the open space areas it is delivering along the Maribyrnong River.

The Panel notes that some of the open space corridor along the Maribyrnong River is in private ownership and there does not appear to be an explicit Government or Council strategy to acquire the private land.⁶

The Panel supports Council’s approach to this issue.

3.3.6 Environmental protection

Submission

The EPA sought various drafting changes at Clause 02.03-3 (Environmental risks and amenity) to better reflect the language of the new environment protection framework, including the *Environment Protection Act 2017* and subordinate legislation, the changes to the Victoria Planning Provisions implemented by way of Amendment VC203 and *Planning Practice Note 30 – Potentially Contaminated Land (PPN30)*.

Council

Council generally supported the EPA’s recommended drafting changes at Clause 02.03-3 and proposes post-exhibition changes to that effect, subject to:

- further amending the EPA’s proposed wording to clarify that contaminated and potentially contaminated land should be addressed “... *through sustainable land practices and environmental management ...*”, to ensure that the drafting is clear and unambiguous.

⁶ Maribyrnong River Valley Design Guidelines, April 2010

Panel discussion

The Panel notes that the EPA supports the exhibited drafting in principle. The drafting of planning scheme policy needs to balance a range of considerations, not the least overall consistency within a scheme (a Council priority) and between schemes (a DELWP priority).

The Panel supports Council's approach to this issue.

3.3.7 Land use compatibility**Submissions**

The EPA sought refinement to the text on land use compatibility.

YourLand requested that the first 'land use compatibility' strategic direction be amended to include the following underlined words:

... minimise off-site amenity impacts from industrial uses on residential uses by encouraging separation distances between industrial use and development and residential use and development, or through specific design and construction techniques to minimise off-site amenity impacts.

Council

Council supported an additional strategic direction generally as proposed by YourLand but not in the form requested by YourLand. Council submitted that land use conflict should be reduced by encouraging appropriate separation distances in the first instance, consistent with Clause 13.07-1s (Land use compatibility) and *Planning Practice Note 92 – Managing Buffers for Land Use Compatibility*. YourLand's requested drafting sought to enable design and construction techniques to be used as an alternative to appropriate separation distances, and in Council's submission, that was not strategically justified and would lead to poor planning outcomes.

Council did not support the EPA's proposed wording in relation to land use compatibility, on the basis that the exhibited wording was considered clear and unambiguous, introducing the term "nuisance air emissions (including odour, dust)" would result in ambiguity regarding what else may be termed a nuisance air emission, and it was not appropriate to remove reference to "contamination" when considering issues associated with land use compatibility in Brimbank.

Panel discussion

The enjoyment of outdoor spaces and private open space is an important aspect of amenity and design and construction techniques rarely protect these outside areas from adverse impacts. Design solutions are not a complete substitute for separation of incompatible uses. The Panel does not see the EPA's proposed changes as being superior to the plain text that Council proposes.

The Panel supports Council's approach to this issue.

3.3.8 Built environment and heritage, heritage section**Submission**

The AACC submitted:

- 9) Clause 2.03-4 'Built Environment and Heritage ... Heritage' makes almost no reference to the HV McKay legacy, including, in a national context, the unique Albion 'Garden City'

legacy... (which is additionally linked in history, to the National Wage Case, through the 'Harvester Judgement').

The Brimbank City Council Post-Contact Cultural Heritage Study⁷, includes remarks:

Brimbank is significant for its planned suburbs and estates: the 1850s settlements of Keilor and 'Albion' (later Sunshine); the architect-designed suburb of St. Albans in Melbourne's 1880s boom; the development of Sunshine- one of the first 'garden suburbs' in Australia - founded by one of Australia's leading industrialists; extensive Commonwealth, State and company housing schemes which created precincts with their own distinct character. (p 6)"

When one of Australia's leading industrialists, HV McKay, decided to re-locate his Ballarat factory, he chose to go to Braybrook Junction. His factory became one of the largest factories in Australia and the new suburb he developed round the older settlement took the name from his famous harvester - 'Sunshine'. It was one of the most unusual town planning developments in Australia's history. His factory has gone, but something of his suburb survives. (p 17) ...

The Keilor Historical Society Inc did not object to the Amendment or request any changes, but emphasised the importance of protecting heritage values and properties need in the Keilor area.

Council

Council submitted that detailed heritage strategies, guidelines and policy documents are properly included at Clause 15.03-1L, and that duplication should be avoided. Council noted that information about the legacy of HV McKay and the development of Albion are contained in *Brimbank City Council Post-Contact Cultural Heritage Study*, which is included as a policy document at Clause 15.03-1L and should be considered where relevant.

Council did not support the requested changes of the AACC.

Council noted that places and objects of heritage significance in Keilor are protected by way of the application of the Heritage Overlay. Council was not proposing any changes to the application of the Heritage Overlay as part of this Amendment.

In terms of local policy content, Clause 02.03 identifies that "*Keilor is significant in part, as a stopover on the way to the gold diggings*" and the Built Environment and Heritage Strategic Framework Plan at Clause 02.04 includes places currently listed in the Victorian Heritage Register, including Overnewton Castle, Overnewton Gatehouse, Keilor Hotel, the Maribyrnong River Bridge and the recently refurbished Keilor Police Hut. Existing local policy content at Clause 22.01 is proposed to be translated to Clause 15.03-1L, which applies to all land affected by the Heritage Overlay.

Council did not propose any changes to the Amendment in response to the Keilor Historical Society Inc. The Panel supports Council's approach to this issue.

Panel discussion

The Keilor Historical Society Inc did not seek specific changes to the Amendment. The Panel supports Council's approach to this submission.

The Panel agrees with the AACC. The current post contact information does not adequately reflect the work of the *Brimbank City Council Post-Contact Cultural Heritage Study*. The current text is tautological "*A sense of Brimbank's history is reflected in the heritage places ...*" and vague

⁷ Brimbank City Council Post-Contact Cultural Heritage Study, Version 2 (Gary Vines, Olwen Ford, Graeme Butler & Francine Gilfedder, 2013)

“Heritage places dating back to the early 1900s are also located throughout the municipality”.

The Panel considers that this text could be more informative as to the overall development of the municipality, and notes the brief, but informative reference to the development of Keilor as a stopover on the way to the gold diggings.

The Panel recommends:

- 3. Amend Clause 02.03-4 (Built environment and heritage) to strengthen the heritage section to include text to the effect that Brimbank is significant for its planned suburbs and estates, including:**
- **the 1850s settlements of Keilor and ‘Albion’ (later Sunshine)**
 - **the architect-designed suburb of St Albans in Melbourne’s 1880s boom**
 - **the development of Sunshine – one of the first ‘garden suburbs’ in Australia – founded by one of Australia’s leading industrialists**
 - **extensive Commonwealth, State and company housing schemes which created precincts with their own distinct character**
 - **the HV McKay factory that became one of the largest factories in Australia and the new suburb that developed round the older settlement took the name from the famous harvester - ‘Sunshine’ and was one of the most unusual town planning developments in Australia’s history.**

3.3.9 Open space

Submission

The AACC sought:

- 10) Clause 02.03-8 ‘Infrastructure and Open Space ... Open Space’ should reference heritage-listed open space sites, which are otherwise ignored ... the key one of these is the State Heritage-listed ‘HV McKay Memorial Gardens’.

Council

Council submitted that Clause 02.03-8 was not the appropriate section of the Planning Scheme to identify open space sites of State or local heritage significance. The purpose of the MPS is to set out land use and development directions for the municipality including an overarching vision. The Heritage Overlay maps are the appropriate mechanism within the Planning Scheme to identify the location of heritage places, including open spaces. On that basis, Council did not support the requested change.

Panel discussion

The Panel does not agree with the submission, but for different reasons than those articulated by Council. The Panel considers that the Municipal Planning Strategy is the place to map significant features and notes the MPS does this with the Community infrastructure and open spaces map identifying ‘Heritage gardens’.

The Panel does not support the submission because it would muddy Council’s three tier approach to open space envisaged by *Creating Better Parks Policy and Plan 2016*:

- Flagship Parks
- Suburban Parks
- Neighbourhood Parks.

A park at any level of this hierarchy could have heritage values, and referencing heritage in this context would not add to understanding of the open space network.

The Panel supports Council's approach to this issue.

3.4 Clause 02.04: Framework Plans

3.4.1 Heritage

Submission

In relation to Clause 02.04, the AACC contended that the Built Environment and Heritage map should include heritage sites and overlays, in particular heritage-listed sites of State significance.

Council

Council noted that Brimbank's heritage precincts, including places and objects that are listed on the Victorian Heritage Register, have been mapped on the Built Environment and Heritage map.

Panel discussion

The Panel supports Council's approach to this issue.

3.4.2 Habitat connectivity

Submission

YourLand sought changes to the 'Context' and 'Environmental and Landscape Values' Strategic Framework Plans to reduce the extent of 'Habitat Connectivity Corridors' within the River Valley Estate to the area specified for the linear open space within the *River Valley Estate Development Plan (2002)*.

Council

Council did not support the requested change, noting that Habitat Connectivity Corridors are distinct from linear open space. The Strategic Framework Plans show the 'Maribyrnong Corridor' which includes Steele Creek and lower Taylors Creek and supports the only known population of Sugar Gliders in Brimbank. Council submitted that the mapping of the Habitat Connectivity Corridors was consistent with, and supported by, local policy at Clause 02.03-2 (that is, supported the provision of a network of habitat corridors) and Clause 12.01-1L (that is, increased connectivity between fragmented areas of biodiversity through the use of waterway habitat corridors).

Panel discussion

The Panel agrees the habitat corridors can be established over developed areas, and are not confined to open space corridors. This is particularly the case for birds, bats and other flying fauna.

The Panel notes that the Habitat Connectivity Corridors does not prohibit development, and the development of the River Valley Estate is not necessarily in conflict with the proposed mapping. The Panel agrees with Council that the mapping of Habitat Connectivity Corridors is appropriate.

The Panel supports Council's approach to this issue.

3.4.3 Other agreed changes relating to the River Valley Estate

Submission

YourLand sought changes to:

- the 'Transport' Strategic Framework Plan to include all bus routes, including through Sunshine North
- the 'Active Transport' and 'Community Infrastructure and Open Spaces' Strategic Framework Plans to include the future pedestrian bridge within the River Valley Estate as further south than shown and as 'indicative Maribyrnong River crossing bridge' – YourLand noted that the pedestrian bridge is required by a section 173 agreement which burdens the land, and is referenced in the Maribyrnong River Valley Design Guidelines.
- the 'Built Environment and Heritage' Strategic Framework Plan to delete reference to 'River Valley Stage 1 and 2' Industrial Estate Guidelines and the 'Industrial Estate Built Form Guidelines' for the River Valley Estate, as the mapped area is not affected by industrial estate guidelines.
- the 'Built Environment and Heritage' Strategic Framework Plan to include the area impacted by the Design and Development Overlay – Schedule 1.

Council

Council supported these changes.

Panel discussion

These changes are appropriate refinements to the Amendment, to improve its accuracy and ensure it is as up to date as possible.

The Panel supports Council's approach to this issue.

3.4.4 Residential guidelines area

Submission

YourLand sought changes to the 'Built Environment and Heritage' Strategic Framework Plan to include River Valley Estate within a residential guideline affected area, noting that residential guidelines have been approved for Stages 1 to 6 and 7A and 7B of the development.

Council

Council did not support the requested change. Council explained that the planning framework for Stages 1 to 6, 7 and 9 have been established through the application of the Development Plan Overlay – Schedule 3 and Council did not consider it necessary, or in accordance with the translation rules, to duplicate the framework in the PPF.

Panel discussion

The Panel notes that the Framework Plan has a legend entry headed 'Industrial estate guidelines'. It is not clear to the Panel why this list is headed 'Industrial estate guidelines', when River Valley Stages 1 and 2, and the Glengala Estate, which are listed under this heading, are not (as the Panel understands) industrial areas.

The Panel recommends:

- 4. On the 'Built Environment and Heritage' Strategic Framework Plan, review the legend heading 'Industrial estate guidelines' and entries under this heading.**

3.4.5 Sunshine North Neighbourhood Activity Centre (River Valley)

Submission

YourLand sought changes to the 'Housing', 'Economic Development', 'Transport', 'Active Transport' and 'Community Infrastructure and Open Spaces' Strategic Framework Plans to include the future Sunshine North Neighbourhood Activity Centre (River Valley). YourLand submitted that:

48. The Sunshine North Neighbourhood Activity Centre (River Valley) is currently identified within Clause 21 .08-1 of the Brimbank Planning Scheme. ...
49. The [River Valley Estate Development Plan] also identifies the land at the location of the River Valley Neighbourhood Activity Centre (NAC) for the 'Village centre', indicating a strategic plan for land at this location to serve as a local hub.
50. Additionally, land at the location of the proposed River Valley NAC is already included within the Commercial I Zone, indicating strategic support for the establishment of a local centre in this location. Furthermore, a planning permit has been issued for the development of a retail centre in this location (P 822/201 7)
51. We do not agree with Council's reference to 'the absence of the development of the River Valley Estate' The River Valley Estate is actively undergoing development and has received planning permission for use and development in multiple stages. Land immediately adjacent to the commercial land has already been developed to provide medium-density residential dwellings. Much of this development has occurred following the release of the Brimbank Activity Centre Strategy 2018.
52. Given the recent planning approvals and development occurring at the River Valley Estate and the anticipated rise in population and demand for services in this area, we consider there to be ample justification to reference a future Neighbourhood Activity Centre in this location.

Council

Council did not support the requested change on the basis that the Sunshine North Neighbourhood Activity Centre is not identified in the *Brimbank Activity Centre Strategy 2018* and development of the centre has not commenced. The relevant part of the River Valley Estate is subject to a Planning Scheme Amendment request and then permit application process. Until such time as those planning processes are complete and development has commenced, Council did not consider it was appropriate to map the future Sunshine North Neighbourhood Activity Centre in the Strategic Framework Plans.

Panel discussion

The Panel agrees with the submitter that the planning for the centre has advanced far enough for it to be included on the Framework Plans with a 'future' notation if this is thought necessary.

The Panel recommends:

5. **On the relevant Framework Plans, include the Sunshine North Neighbourhood Activity Centre.**

3.4.6 River Valley Estate as a 'Residential Strategic Investigation Area'

Submission

YourLand sought changes to the 'Context' and 'Housing' Strategic Framework Plans to identify the River Valley Estate as a 'Residential Strategic Investigation Area, stating that relying on an eight year old policy not justified.

Council

Council did not support the requested change, stating that the River Valley Estate was not identified as a 'Residential Strategic Investigation Area' in *Brimbank Housing Strategy 'Home and Housed' 2014* and therefore, it is not appropriate to designate it as such in the PPF.

Panel discussion

The Panel does not consider the eight years is especially old for a policy and notes that while some policies might become 'stale' others 'stand the test of time' and can be expected to implemented in perpetuity.

Planning for residential development needs to be done across the whole of the municipality and avoid ad hoc decisions on individual sites.

The Panel supports Council's approach to this issue.

3.4.7 Melbourne Airport

Submission

YourLand sought changes to:

- the 'Environmental and Landscape Values' Strategic Framework Plan to update the MAEO extent in accordance with Amendment VC173.

Australia Pacific Airports (Melbourne) Pty Ltd (APAM) sought various changes to the Amendment. In relation to the Framework Plans APAM submitted:

There is no relationship between the strategic framework plans and Clause 02.03 to explain what the landscape limitation area, height limitation area and landscape limitation area.

Context map

- Should include current MAEO and N-Contours as per the approved Master Plan and NASF Guideline A: Measures for Managing Impacts of Aircraft Noise (to implement clause 18.04 at the local level).
- Amend MAEO to current boundary.

Environmental and Landscape Values Map

- Incorrectly identifies the landscape limitation area to the MAEO boundary
- Doesn't clarify what the landscape limitation area is.
- The MAEO boundary identified on the map was superseded with the new boundary in force as of 26 October 2021 (Amendment VC173).
- Amend boundary of limitation area consistent with NASF Guideline C.

Built Environment and Heritage map

- Incorrectly refers height limitation area to accord with MAEO.
- Amend MAEO to current boundary.
- Should include N-Contours.
- Doesn't clarify what the height limitation area is.
- Amend boundary of height limitation consistent with Prescribed Airspace and Melbourne Airport Master Plan.

Community infrastructure and open spaces

- doesn't refer to landscape limitations for Melbourne Airport.
- Amend boundary of limitation area consistent with NASF Guideline C.
- Doesn't refer to NASF Guidelines.

Council

Council submitted that in accordance with *A Practitioner's Guide*, it is not appropriate to repeat State policy and information already contained in planning controls at a local policy level. This includes matters relating to the ANEF, the MAEO, use and density controls, protection of prescribed airspace and safeguarding principles.

Council proposed to amend the Strategic Framework Plans to delete all references to the MAEO, Landscape Limitation Area and Height Limitation Area, as those matters are appropriately implemented through State policy and planning controls and should not be duplicated at a local policy level.

Panel discussion

The Panel does not support the proposed changes to the Framework Plans proposed by Council. Amending the Strategic Framework Plans to delete all references to the MAEO, Landscape Limitation Area and Height Limitation Area, runs contrary to the thrust of the submission. These might be State issues but they affect how the municipality can or should be developed. It would make about as much sense to remove the Sunshine Metropolitan Activity centre designation on the basis that this was a 'state' designation.

It seems to the Panel that rather than correct the mapping as requested by the submitters, Council is seeking to simply remove the notation as an expedient way forward. In preparing the Amendment Council thought it appropriate to map the MAEO, Landscape Limitation Area and Height Limitation Area, and the Panel thinks was an appropriate approach as these are high level constraints on development.

The Panel is also concerned that the proposed change cannot be described as a change to address the submitters' concerns, and that making these changes without further notice to Melbourne Airport runs counter to the principles of natural justice.

Current policy at Clause 18.02-7S (Airports and airfields) states:

Limit the intensification of noise-sensitive land uses, and avoid zoning or overlay changes that allow noise-sensitive land use and development, where ultimate capacity or long-range noise modelling indicates an area is within a 20 Australian Noise Exposure Forecast (ANEF) contour or higher.

Avoid zoning or overlay changes that allow noise-sensitive land uses outside the Urban Growth Boundary, and encourage measures to reduce the impact of aircraft noise in planning for areas within the Urban Growth Boundary, where ultimate capacity or long-range noise modelling indicates an area is within 'number above' contours (N Contours) representing:

- 20 or more daily events greater than 70 dB(A).
- 50 or more daily events of greater than 65 dB(A).
- 100 or more daily events greater than 60 dB(A).
- 6 events or more between the hours of 11pm to 6am greater than 60 dB(A).

Local implementation of these policies may have strategic implications for development in Brimbank and so should be mapped on Housing Framework Plan, housing being a sensitive use. The Context Framework Plan already presents a lot of information and including just the MAEO would be appropriate for this plan.

The Panel recommends:

6. Address airport safeguarding:

- on the Context Framework Plan include the current Melbourne Airports Environs Overlay
- on the Environmental and Landscape Values Framework Plan, correct the boundary of landscape limitation area consistent with National Airport Safeguarding Framework Guideline C
- on the Built Environment and Heritage Framework Plan, correct the boundary of height limitation consistent with Prescribed Airspace and Melbourne Airport Master Plan
- on the Housing Framework Plan add the current Melbourne Airports Environs Overlay and include N contours.

3.4.8 Other issues

At the Hearing the Panel observed that the location of the Airport Rail Link was incorrect on the Framework Plans, and the 'Non-conforming land use' graphic notation in the legend does not match the notation on the plans themselves.

The Panel recommends:

- 7. On the Framework Plans, review the location of the Airport Rail Link and the 'Non-conforming land use' graphic notation.**

4 PPF issues and scheme provisions

4.1 Noise impacts

Submission

Submission 4 requested that a provision be added to the Planning Scheme to protect people from the noise impacts from:

- local fireworks
- high density living.

Council

Council outlined the existing provisions and regulatory framework in relation to noise.

State policy at Clause 13.05-1S seeks to assist the control of noise effects on sensitive land uses, by ensuring that :

... development is not prejudiced and community amenity and human health is not adversely impacted by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.

Noise impacts are also controlled and regulated by way of existing provisions at Clause 55 (two or more dwellings on a lot and residential buildings) and Clause 58 (apartment developments), the *Environment Protection Act 2017 (Vic)* and subordinate legislation, and Council's General Local Law 2018.

Panel discussion

The Panel agrees that noise issues are comprehensively dealt with in planning schemes and by other regulations.

The Panel supports Council's approach to this issue.

4.2 Sensitive uses in industrial and employment areas

Submission

The EPA recommended drafting changes at Clause 13.07-1L-02 (Sensitive uses in industrial and employment areas) to require that land be demonstrated to be suitable for the proposed use, having regard to environmental risks including noise, air emissions and contaminated land.

Council

Council did not support the EPA's recommended drafting changes. Clause 13.01-1L-02 as currently drafted places the onus on new sensitive uses in Industrial and Employment Areas to protect their amenity through siting and design, rather than just the suitability of the land.

Panel discussion

The Panel agrees with Council that the EPA's recommendation obscures the emphasis on siting and design, as well as the responsibility of the new sensitive use to reduce adverse amenity impacts.

The Panel supports Council's approach to this issue.

4.3 Urban Stormwater Management Guidance

Submission

The EPA recommended the inclusion of EPA Publication 1739.1: Urban Stormwater Management Guidance:

- as a policy document at Clause 19.03-3S
- as a policy guideline at Clause 15.02-1L-02.

Council

Council noted that changes to State policy including Clause 19.03-3S are outside the scope of this Amendment. However, Council proposed to include the EPA publication as a policy document at Clause 19.03-3L in response to the EPA's recommendation.

As the EPA publication is proposed to be included at Clause 19.03-3L, Council submitted that it is not necessary to repeat it at Clause 15.02-1L-02 as a policy guideline.

Panel discussion

The Panel supports Council's approach to this issue.

4.4 Built Environment Sustainability Scorecard

Submission

Submission 4 said that the minimum BESS (Built Environment Sustainability Scorecard) score is not sufficient, and that it should be increased to 80 per cent.

Council

Council submitted that the current Environmentally Sustainable Design policy was prepared in collaboration with a number of local councils and approved by DELWP.

Panel discussion

The Panel agrees with Council that to increase the minimum BESS score, Council would need to develop a new policy position, informed by further strategic work. That is outside the scope of this Amendment.

The Panel supports Council's approach to this issue.

4.5 Landscape, urban forest and street trees

Submission

Submission 4:

- sought increased vegetation and landscaping
- noted that Brimbank is particularly vulnerable to the urban heat island effect, due to impervious surfaces and high rates of car usage
- noted the impacts on health and liveability as a result of large areas of hardscapes across the municipality, including the urban heat island effect, urban stormwater run-off and a lack of natural features and eco-systems
- sought stronger planning provisions to implement the *Urban Forest Strategy 2016-2046* and the *Brimbank Climate Emergency Plan 2020-2025*

- sought a tree register
- sought the implementation of a municipal-wide streetscape policy
- requested that Council implement a streetscape policy and consider underground power lines to protect the environment and avoid tree loss
- contended that St Albans experiences the most significant urban heat island effect, and that a greater focus on landscaping, and green space is required, rather than more concrete.

Council

Council submitted that content from strategies and policy documents adopted by Council that does not have a land use focus can be translated into the Planning Scheme.

Clause 02.02-3 presents local policy relating to climate change. It notes that Council has declared a Climate Emergency and affirms that it will seek to address the immediate challenge of climate change by becoming a low-carbon, resilient community. This is supported by seven new strategic directions sourced from the *Brimbank Climate Emergency Plan 2020-2025*, *Revised Greenhouse Reduction Strategy 2013 – 2023* and *Urban Forest Strategy 2016-2046*. Those strategies are all proposed to be included as background documents at Clause 72.08.

Council currently manages a significant tree register for Council owned or maintained trees. In August 2021, Council adopted the *Brimbank Tree Policy – A cooler, greener Brimbank*. The Brimbank Tree Policy is an action from the *Urban Forest Strategy 2016-2046*. The Brimbank Tree Policy provides directions for surveying and valuing trees in the public domain, and the ongoing planting, protection or replacement of trees.

Council is in the process of preparing a municipal wide streetscape policy ‘Creating Better Streets for People’. The first round of community consultation was completed on 10 October 2021. When this policy is considered by Council and finalised, officers will have the opportunity to review it and consider how it can be incorporated into the Planning Scheme.

Council did not propose any changes to the Amendment in response to these submissions.

Panel discussion

The Panel notes that the Amendment includes strategies related to the urban heat island effect.

The Panel supports Council’s approach to this issue.

4.6 Heritage

4.6.1 Non-contributory buildings

Submission

The AACC contended that the following policy currently contained within Clause 22.01-4 should be retained in the new format PPF:

Disregard the impact of non-contributory buildings and works when determining the appropriate siting, massing and scale of extensions and upper storey additions to existing buildings and the construction of new buildings in a Heritage Overlay.

Council

Council submitted that it had considered the above policy as part of the translation process, and determined that it was appropriately incorporated in the new format PPF at Clause 15.03-1L as follows:

Non-contributory buildings

Locate upper level additions to the rear of non-contributory buildings and design them to be visually recessive and integrate with the heritage character and rhythm of the streetscape.

Council acknowledged that it is not a direct translation and in light of internal referral comments, proposed a post-exhibition changes to incorporate policy currently in Clause 22.01-4 as a new development strategy at Clause 15.03-1L.

Panel discussion

The Panel supports Council's approach to this issue.

4.6.2 Heritage height of buildings at rear

Submission

The AACC contends that policy within Clause 22.01-4 "*relating to a restriction on height of rear buildings in a Heritage Overlay area*" should be retained, to enable sympathetic urban renewal. Clause 22.01-4 currently states:

It is policy to ensure that new buildings to be located at the rear of a contributory or non-contributory building in heritage areas:

...

- Have a height less than that of the contributory building, except where located on a corner site.
- ...
- Employ a contemporary and contextual design approach, where the eaves height and overall height of the new building is in keeping with that of the contributory building, when a new building is proposed on a corner site or a highly visible location."

Council

Council considered the above policy as part of the translation process, and in consultation with Council's Heritage Advisor determined that it was appropriately incorporated in the new format PPF at Clause 15.03-1L as follows:

New Buildings

Ensure that buildings located to the rear of an existing contributory or non-contributory building:

- Reflect the scale, form, setting and side setbacks of the contributory building at the frontage of the site.

Panel discussion

The impact or rear extensions on heritage values is a function of visual impact and not height itself.

The Panel supports Council's approach to this issue.

4.7 Character and quality of St Albans

Submission

Submission 4 contended that there are safety concerns in St Albans and poor visual amenity (rubbish, unkept properties, unsightly residential developments, high numbers of cars and pollution).

Council

Council submitted new local policy content is proposed at Clause 15.01-5L which is directed towards preserving and enhancing neighbourhood character, including landscape character, in residential areas where an assessment against neighbourhood character is required.

Panel discussion

Rubbish, unkept properties, unsightly residential developments, high numbers of cars and pollution are not matters that can be directly addressed by the Planning Scheme: this does not mean they are unimportant.

The Panel supports Council's approach to this issue.

4.7.1 'ResCode' issues

Submission

Submission 4 sought:

- a reduction in visual bulk, increased "unit space ratio" on new units
- stronger planning provisions to control overlooking, overshadowing, noise impacts, building heights, hard surfaces, solar access and solar glare
- a limit of three dwellings in growth zones
- the prohibition of new dwellings built behind existing dwellings
- that overlooking from upper levels into backyards be prohibited
- limits on the number of lots that can abut another lot that the submitter called "fence line sharing".

In Clause 15.01-5L, YourLand sought to amend the third strategy to read:

- "~~Ensure~~ Encourage secluded private open space ~~is to be~~ located behind the front façade of dwellings within the Neighbourhood Residential Zone and General Residential Zone".

YourLand submitted that while the outcome sought is desirable, there may be some instances where secluded private open space at the front of dwellings is appropriate and policy must be flexible to allow for situations where it may be required.

Council

Council submitted built form and residential amenity considerations such as visual bulk, plot ratio, overlooking, overshadowing, noise, building height and solar access are dealt with by the provisions commonly referred to as 'ResCode', namely the provisions at Clause 54 (one dwelling on a lot), Clause 55 (two or more dwellings on a lot and residential buildings) and Clause 58 (apartment developments). Any proposed changes to those planning provisions is beyond the scope of this Amendment.

Council did not support YourLand's the requested change, saying that the strategy had been translated from existing local policy at Clause 21.07, and was consistent with the drafting rules contained *A Practitioner's Guide*.

Panel discussion

The Panel agrees with Council that ResCode issues are beyond the scope of this Amendment. The Panel observes that controls over residential development need to balance a range of competing policy objectives, and while changes to some ResCode provisions can be scheduled into residential zones, such changes require detailed strategic justification.

The Panel does not support weakening policy as to the location of secluded open space. Locating secluded open space behind the front facade is more than simply desirable. It goes to the core of neighbourhood character, crime reduction through causal surveillance, and opportunities for ad hoc interactions between neighbours. The Panel notes it is existing policy.

The Panel supports Council's approach to this issue.

4.8 Agent of change principle

Submission

The EPA recommended that the 'agent of change' principle be embedded into local policy relating to encroachment, land use compatibility and separation distances, specifically Clause 17.03-1L (Industrial land supply) and Clause 13.07-1L-02 (Sensitive uses in industrial and employment areas).

Council

Council noted that Rules 6 and 7 in *A Practitioner's Guide* provide that a provision must define its application by reference to land use or development terms defined in the PE Act or the Victoria Planning Provisions.

The 'agent of change principle' is not defined in the PE Act or the Victoria Planning Provisions. However, it is an accepted planning term used at Clause 53.06 and discussed in *Planning Practice Note 81 – live Music and Entertainment Noise*. On that basis, Council agrees that the agent of change principle is an appropriate consideration in relation to managing land use conflict.

Council considered that the current drafting of Clause 13.07-1L-02 already gives effect to the agent of change principle, by providing that sensitive uses are only to be supported where they are designed and sited to protect themselves from adverse amenity impacts from existing industrial uses. The new sensitive use is the agent of change and therefore, it is incumbent on them to attenuate against adverse impacts from existing uses.

Moreover, Council did not agree that it is appropriate to embed the agent of change principle at Clause 17.03-1L, which relates to the supply and orderly development of industrial land, not amenity impacts.

On that basis, Council did not support any change to Clause 13.07-1L-02 and Clause 17.03-1L to embed the agent of change principle.

Panel discussion

The EPA's concerns seem to the Panel to be matters of State or metropolitan concern and not matters that are specific to the particular circumstances of Brimbank.

The Panel supports Council's approach to this issue.

4.9 Airport issues

Australia Pacific Airports (Melbourne) Pty Ltd (Melbourne Airport) sought various changes to the Amendment to implement State policy in relation to airport safeguarding. Melbourne Airport also suggests that Clause 18.04 (Airports) and specifically, Clause 18.04-1S (Planning for airports and airfields) do not achieve their stated objectives relating to strengthening the role of Victoria's airports and airfields.

Council

Council noted that Melbourne Airport is of State significance, and accordingly it is appropriate that airport safeguarding is implemented through State policy, not local policy.

Council noted Amendment VC218 amended Clause 18.02-7S (Airports and Airfields) and Clause 18.02-7R (Melbourne Airport) to further implement the NASF at a State level. Council also notes Amendment VC173 which was gazetted on 26 October 2021 and updated the MAEO to reflect the 2018 Australian Noise Exposure Forecast (ANEF) shown in the current *Melbourne Airport Master Plan* (Australia Pacific Airports Pty Ltd, Melbourne, 2018).

Council submitted that in accordance with *A Practitioner's Guide*, it is not appropriate to repeat State policy and information already contained in planning controls at a local policy level. This includes matters relating to the ANEF, the MAEO, use and density controls, protection of prescribed airspace and safeguarding principles.

Council proposed change at Clause 11.01-1L (Sunbury Green Wedge) and Clause 72.08 (Background Documents), to delete the background document *Melbourne Airport Master Plan* (Australia Pacific Airports Pty Ltd, Melbourne, 2018), as consequence of the above proposed change.

Council otherwise submitted that the matters raised by Melbourne Airport are beyond the scope of this Amendment.

Panel discussion

The Panel agrees that policy statements about the airport need to be addressed at a State level. The Panel has recommended above that the spatial implications of those policies at a local level should be mapped on the framework Plans.

The Panel supports Council's approach to this issue.

4.10 Application of Zones, Overlays and Provisions

Submission

The EPA recommends the addition of the following at Clause 74.01 (Application of Zones, Overlays and Provisions):

Apply the Buffer Area Overlay to manage the location and siting of industries and incompatible uses (for example, residential development) to minimise land use conflict

Council

Council did not support the EPA's recommendation on the basis that the Planning Scheme does not currently include the Buffer Area Overlay and it is therefore not appropriate to include reference to it at Clause 74.01.

Panel discussion

The Panel supports Council's approach to this issue.

4.11 Further strategic work

The EPA recommends the addition of the following at Clause 74.02 (Further Strategic Work):

Potential for a future piece of work to identify potentially contaminated land within the municipality.

Council did not support the EPA's recommendation. In accordance with *A Practitioner's Guide*, further strategic work at Clause 74.02 should be "*a concise list of work the council intends to undertake in the next review cycle (approximately 4-8 years)*"⁸. The EPA's recommended strategic action is not identified on Council's list of strategic projects, which was developed based on the *Brimbank Council Plan 2017-2021*. As Council did not formally intend to undertake this work in the next review cycle, Council did not consider that it should be included at Clause 74.02.

However, Council acknowledged the EPA's recommendation and recognised the importance of identifying contaminated and potentially contaminated land within Brimbank, particularly given its industrial legacy. Accordingly, the project may be identified as future strategic work and included in the Planning Scheme via a separate planning scheme amendment process.

Panel discussion

The Panel supports Council's approach to this issue.

⁸ Page 50.

Appendix A Document list

No.	Date	Description	Provided by
1	30 May 2022	Correct Plan of Submitters	Council
2	8 June 2022	Council Part A submission	Council
3	8 June 2022	Expert evidence of Mr Sam D'Amico	Council
4	10 June 2022	Council Part B submission	Council
5	14 June 2022	AACC submission	AACC
6	15 June 2022	YourLand submission	YourLand
7	17 June 2022	Letter re proposed drafting for Clause 02.03-3 tabled at the hearing	Council
8	17 June 2022	Verbal submission from YourLand	Council
9	17 June 2022	River Valley estate section 174 Agreement	Council
10	30 June 2022	Comparison table C225brim and VC216	Council
11	30 June 2022	Council final position on the Amendment	Council